



UNITED STATES PATENT AND TRADEMARK OFFICE

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**JAN 13 2006**

**TECHNOLOGY CENTER 3600**

LAWRENCE N. GINSBERG  
21 SAN ANTONIO  
NEWPORT BEACH CA 92660-9112

In re Application of	:	
Mark E. Anderson et al.	:	DECISION ON PETITION
Application No. 10/693,660	:	TO WITHDRAW THE
Filed: October 24, 2003	:	HOLDING OF ABANDONMENT
For: METHOD AND APPARATUS FOR CREATING:	:	
A PATHWAY IN AN ANIMAL	:	

This is in response the petition to withdraw the holding of abandonment under 37 CFR 1.181 received March 20, 2005. There is no fee for this petition.

The petition is **DENIED**.

A review of the file record indicates that the application was held abandoned for failing to file a proper response to the Office Action mailed July 13, 2004, which set a shortened statutory reply period of three-months. A Notice of Abandonment was mailed on February 24, 2005.

Applicant requests that the holding of abandonment be withdrawn and the prosecution of the case be reopened because a Preliminary Amendment was mailed on July 8, 2004 (it is noted that the Certificate of Mailing on this amendment reflects a mail date of July 9, 2004, rather than July 8, 2004) which "crossed in the mail" with the Office Action mailed July 13, 2004. Applicant's representative notes that he was in telephone communication with the Examiner and was under the impression that no action was necessary in response to the Office Action and that a new Office Action would be issued.

37 CFR 1.2 recites all business with the Patent and Trademark Office should be transacted in writing. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt. As there is no written record within the three-month shortened statutory reply period of any agreement of a supplemental Office Action being issued or of Applicant notifying the Office that the Office Action of July 13, 2004, was issued on the claims as originally filed rather than the claims as amended in the Preliminary Amendment mailed July 9, 2004, the Abandonment of this application, mailed February 24, 2005, is deemed proper.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

#### I. Unavoidable Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: **(1)** the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; **(2)** the petition fee required by 37 CFR 1.17(l); and **(3)** an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

#### II. Unintentional Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: **(1)** the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; **(2)** the petition fee required by 37 CFR 1.17(m); and **(3)** a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$500. The fee for a petition under the unintentional standard is \$1,500. If applicant has, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive.

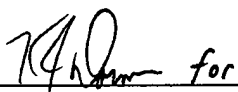
The required items should be promptly submitted under a cover letter entitled "Petition to Revive".

Further correspondence with respect to a petition to revive should be addressed as follows:

By mail:                      Mail Stop Petition  
                                 Commissioner for Patents  
                                 P.O. Box 1450  
                                 Alexandria, VA 22313-1450

By FAX:                      (703) 872-9306  
Attn: Office of Petitions

Telephone inquiries should be directed to the Office of Petitions Staff at (571) 272-3282.

 *for*  
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Randolph A. Reese  
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(571) 272-6619

RAR/rjc                      07/21/05